

CLERK U.S. DISTRICT COURT
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EXHIBIT B

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEW JERSEY

3 Case No.: 3:22-06430-MAS-JBD

4
5 -----x
6 CALEB L. MCGILLVARY,

7 Plaintiff,

8 vs.

9 RAHMO RIEZ, et al.,

10 Defendant.
11 -----x

12
13
14 IN-PERSON DEPOSITION OF CALEB L. MCGILLVARY

15 WEDNESDAY, JANUARY 22, 2025

16 1:06 P.M.
17
18
19
20
21
22
23

24 JOB NO.: P1-7099228
25

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1 T R A N S C R I P T of the stenographic notes
2 of the proceedings in the above-entitled matter as taken
3 by and before LORI N. LEWKOWITZ, a Certified Court Reporter
4 and Notary Public of the State of New Jersey, and a
5 Certified Shorthand Reporter of the State of New York,
6 held at the New Jersey State Prison, 600 Cass Street,
7 Trenton, New Jersey 08611, on Wednesday, January 22, 2025,
8 commencing at approximately 1:06 in the afternoon, pursuant
9 to notice.

1 A P P E A R A N C E S:

2
3
4 NORRIS, McLAUGHLIN, P.A.

5 Attorneys for Defendants

6 400 Crossing Boulevard, 8th Floor

7 Bridgewater, New Jersey 08807

8 BY: MARGARET RAYMOND-FLOOD, ESQ.

9 Mrflood@norris-law.com

10 (908) 722-0700

11
12
13 ALSO PRESENT:

14 KEITH RONAN, ESQ.

15 Associate General Counsel

16 Rutgers University
17
18
19
20
21
22
23
24
25

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I N D E X

WITNESS	PAGE
CALEB L. MCGILLVARY	5
EXAMINATION BY DIRECT CROSS REDIRECT RECROSS	
MS. RAYMOND-FLOOD	5

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
McGILLVARY		
1	Handwritten Complaint	29
2	Document dated August 25, 2022	66
3	Consent for medical, dental or surgical treatment form dated 10/6/22	94
4	Handwritten document	98

(Exhibits attached)

DOCUMENTS/INFORMATION REQUESTED

	PAGE
(None requested)	

1 C A L E B L. M C G I L L V A R Y,

2 called as a witness, having been affirmed
3 duly sworn by the Notary Public of the
4 State of New Jersey, was examined and
5 testifies under oath as follows:

6 DIRECT EXAMINATION

7 BY MS. RAYMOND-FLOOD:

8 Q. Good morning, Kai. I'm Margaret
9 Raymond-Flood. I'm with the law firm Norris
10 McLaughlin. We represent Mr. Riez in the litigation
11 you brought in connection with your dental care
12 treatment.

13 We are here today to take your
14 deposition. I know you want to put some things on
15 the record and we certainly can do that, but I want
16 to get through the introductory comments on the
17 record as well.

18 We are here to take your deposition.
19 You have affirmed. What you are about to say is the
20 truth and we -- I'll ask you a series of questions.
21 If you don't understand one of my questions you
22 should let me know that. I'm happy to rephrase but
23 I'm not trying to trick you with any of my
24 questions.

25 If my question is confusing, let me

1 know. I'll assume you've understood it if you don't
2 ask me to rephrase it. Let me know if there is
3 something I asked you that is unclear.

4 We will be taking down everything that
5 we say in the room today. Our court reporter is
6 writing each word down so it's very important for us
7 to try not to talk over each other. I will do my
8 best to wait until you are finished speaking before
9 I ask my next question. I just ask you also wait
10 until I'm finished before you speak.

11 Do you understand that?

12 A. I understand what you said.

13 Q. Good. If there is any point in time
14 where you need a break we have to ask the officers,
15 but you are certainly welcome to do that. If there
16 is any time that you don't understand something
17 going on in the proceeding, please let know. I'll
18 do my best to answer your question.

19 A. Thank you.

20 Q. You are welcome.

21 A. I would like to get a matter on the
22 record.

23 Are you finished speaking?

24 Q. Yes.

25 A. Prior to her introduction and my

1 swearing in, there was a discussion between counsel
2 and I wish they represented to me that this
3 deposition is not being video recorded, but it is
4 being audio recorded.

5 I requested that I have the right of
6 review of the transcript of this deposition so I
7 could ascertain whether it is a true and accurate
8 record of the proceedings.

9 I'm finished. Thank you.

10 Q. You are welcome.

11 For the record, when we get the copy of
12 the transcript we'll send it to you in the mail and
13 you can review it at this time.

14 A. Thank you.

15 Q. It takes a week or two before we get
16 the transcript. As soon as I get it, I'll send it
17 to you.

18 A. Are you finished speaking?

19 Q. Yes.

20 A. I would like to note the deposition was
21 scheduled for ten o'clock this morning. However, as
22 far as I'm aware it's eleven o'clock. I was present
23 at the time the deposition was supposed to start. I
24 wanted to make that a matter of record.

25 Q. Thank you very much. We were also out

1 in the waiting room waiting for approximately an
2 hour. I'm not sure what exactly what the holdup
3 was. We were --

4 A. This is a pattern in New Jersey State
5 Prison. Interfering with legal access as well as
6 legal professionals' access to inmates.

7 Q. Well, let me ask you:

8 Have you ever been deposed before?

9 A. Negative.

10 Q. Are you on any current medications that
11 would affect your ability to answer truthfully
12 today?

13 A. Caffeine would not affect my ability to
14 answer truthfully. No.

15 Q. Are you on any other medications?

16 A. Just the caffeine I drank -- drink this
17 morning.

18 Q. As in coffee?

19 A. As in coffee.

20 Q. Mr. McGillvary, how long have you been
21 in New Jersey State Prison?

22 A. I am sorry. Could you please repeat
23 that? There is a lot of noise going on outside of
24 the room right now.

25 Q. Sure. How long have you been in the New

1 Jersey State Prison?

2 A. Since 2019.

3 Q. Have you ever been in a prison, other
4 than New Jersey state prison?

5 A. I've been in correctional facilities.

6 Q. Okay. When was that?

7 A. From 2013 until 2019 I was in the Union
8 County Jail. In April of 2019 I was transferred to
9 Essex County Correctional Facility. I was
10 transferred from there to here end of May 2019.

11 Q. Prior to 2014, '13 had you been in any
12 prison or correctional facility?

13 A. In New Jersey?

14 Q. Anywhere.

15 A. Yes.

16 Q. Where?

17 A. Mendocino County Jail.

18 Q. Where is that?

19 A. Ukiah, California.

20 Q. What years? Estimate is fine.

21 A. I believe it -- at the end of '01, but
22 there are writings that exist that would refresh my
23 recollection. These writings were created by the
24 Mendocino County Sheriff's Office in the course of
25 their duties. They were prepared on a date and time

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1 at which I was at the Mendocino County Jail.

2 Q. What was the reason that you were at
3 the Mendocino County Jail?

4 A. I stole iced tea from a McDonald's
5 drinking fountain.

6 Q. In terms of your incarceration that
7 began in 2013, which began with the Union County
8 Jail, what was the reason for the incarceration
9 beginning in 2013?

10 A. I invoke my Fifth Amendment privilege.
11 It's not relevant to materials. I object. This is
12 not relevant to -- material to this proceeding. I can
13 provide a privileged log.

14 Would you like to pause this proceeding
15 so I could move for a protective order or would you
16 like to pass on the motion?

17 Q. I'll pass on the question for the
18 moment but I reserve all rights to ask you the same
19 question. I'm trying to get a sense,
20 Mr. McGillvary, what your conviction was for 2013.

21 A. I invoke my private Fifth Amendment
22 privilege.

23 Q. Do you have a release date scheduled?

24 A. I object as irrelevant and immaterial
25 to this litigation.

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1 Q. Okay. Let's start with your -- let's
2 start with your health background.

3 What is your current health today?
4 Generally speaking.

5 A. I'm not qualified to answer this
6 question. I'm not a doctor.

7 Q. Do you have any medical conditions that
8 you are currently being treated for here at the
9 prison?

10 A. I object as overbroad, irrelevant and
11 immaterial to this. It also calls for privileged
12 health information that I'm not required to
13 disclose.

14 Q. Mr. McGillvary, I'm going to also go on
15 the record to say that I'm entitled to ask you
16 questions regarding your stay, your health care,
17 your dental care treatment. You can certainly take
18 whatever position you would like today. I'm not
19 going to argue or discuss them with you as we go
20 through. You can give us your position.

21 It is possible I'll go back to the
22 court to explain what happened here at the
23 deposition, but let's get through as much as we can.

24 Does that make sense?

25 A. I appreciate that.

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1 Q. Okay?

2 A. I also have the right and the
3 opportunity to make objections to overbroad
4 questions that asked for privileged material.

5 If you like I can provide a privileged
6 log.

7 Q. I don't need a privileged log.

8 What is your current dental health?

9 A. My current dental health is that I have
10 not been able to get my teeth cleaned or a dental
11 checkup since early, early 2021 because the
12 triggering of my post-traumatic stress disorder by
13 your client, Ronald Riez, which has prevented me
14 from accessing dental services because when I've
15 gone to the North Compound Clinic, your client has
16 been present which triggered my PTSD.

17 Q. What is the basis for your
18 understanding that you have PTSD?

19 A. I had been diagnosed with
20 post-traumatic stress disorder by a psychiatrist.

21 Q. A psychiatrist at the prison?

22 A. Yes.

23 Q. Who? If you know.

24 A. There are writings that exist that
25 would refresh my recollection of his name. These

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1 writings were prepared by the Rutgers University
2 Correctional Health employees in the course of their
3 duties. They were prepared on a date or time that
4 would be reflected in documents, which I wouldn't be
5 able to provide for you. However, I'll be moving
6 these documents be subject to a seal because they do
7 contain private health information.

8 So, with those objections in mind that
9 are caused for privileged health information, I ask
10 them.

11 Q. Okay. Mr. McGillvary, so we are clear,
12 any documents that we would file with respect to
13 your medical records would be filed under seal.

14 No. 2, to the extent that you are
15 talking about the medical records, are you talking
16 about the medical records that are kept here at the
17 prison? The electronic medical records?

18 Is that what you are talking about? I
19 would find this information.

20 A. The medical records are kept by your
21 client, Rutgers University Correctional Health Care.
22 They are in the custody and control of Rutgers
23 University Health Care.

24 Q. What is the basis for this statement?

25 A. I have seen these documents and

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1 speaking from recollection of what they look like.

2 Q. Are you currently under any psychiatric
3 treatment within the prison system?

4 A. I object to this as irrelevant and
5 immaterial and cause for privileged health
6 information.

7 Q. Mr. McGillvary, you told me you have
8 PTSD, which I understand to be being treated by the
9 mental health physicians in this prison.

10 So, are you refusing to tell me whether
11 or not you are being treated for PTSD in the prison
12 system?

13 A. Subject to the objections I've made on
14 the subject to a motion to seal my PTSD is a
15 condition for which I am receiving treatment.

16 Q. Thank you. Are you on any medications
17 for the PTSD?

18 A. Subject to the same objections I've
19 made. No.

20 Q. How often are you seen by a mental
21 health physician for the PTSD issue?

22 A. Subject to my previous objections I was
23 seen by a mental health professional 62 weeks.

24 Q. Are you on the special needs roster for
25 mental health?

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1 A. Subject to my previous corrections, I'm
2 on the special needs roster for mental health.

3 Q. Thank you. Let's switch gears a little
4 bit.

5 In terms of dental care, what is the
6 process that you would follow in order to get an
7 appointment to see a dental provider?

8 A. So, as far as I'm aware, the dental
9 services schedules me automatically for biannual
10 exams. During these exams it is a habit and
11 routine, organizational practice of the Rutgers
12 University Correctional Health Care to call the
13 inmates from their housing unit to the North
14 Compound Clinic.

15 When they do this, there is a public
16 record that's created. It is created by the
17 New Jersey Department of Corrections officer on the
18 housing unit. This is called the Six Right
19 officers' logbook.

20 There is also a traffic control log on
21 the unit which is visible to all of the inmates on
22 the unit. It is hung on a bulletin board which is
23 besides the officers' desk. The inmate checks this
24 travel control log and logs their traffic control
25 which is the West Compound.

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1 This routine, the inmates go through
2 the metal detector -- excuse me -- to the traffic
3 control booth at which point a New Jersey Department
4 of Corrections officer creates a public record in
5 the course of his duties, indicates the time and
6 location of the dental (inaudible) -- the inmate
7 then receives a traffic control pass which is a
8 plastic card that he attaches to his lab work.

9 They then walk in the North Compound
10 Clinic. When he gets there, an officer creates a
11 public record in the course of their duties at
12 the -- the New Jersey Department Corrections officer
13 and this public record is called a North Compound
14 Clinic officers' logbook. In this logbook they
15 record the date and the time as well as the tenor of
16 the visit to the North Compound Clinic.

17 Another record is also created on this
18 date and at this time which is known as the North
19 Compound Clinic Traffic Control Log. Each of these
20 public records I've just referred to from this point
21 forward in this deposition I'll refer to under the
22 term "traffic control records."

23 Does that sound all right with you?

24 Q. Fine with me.

25 A. Perfect. As far as I'm aware, there

1 are also additional procedures. These procedures
2 for which an inmate will request medical care for
3 themselves that is, they will go to a kiosk at a
4 designated time on their housing unit. On the kiosk
5 they will write a request to the medical services
6 department at which point an electronic record is
7 created by the New Jersey Department of Corrections
8 and the Rutgers University Correctional Health Care.

9 This electronic record is created by
10 the inmate and is also acknowledged by an employee
11 of the Rutgers University Correctional Health Care
12 at which point that employee makes a report of their
13 own which is stored on the servers that are in the
14 custody or control of the Rutgers University
15 Correctional Health Care and the New Jersey
16 Department of Corrections.

17 This record indicates what date and
18 time the inmate is scheduled to go to the North
19 Compound Clinic to receive the medical care, when
20 the inmate arrives at the North Compound Clinic --
21 the traffic -- the traffic control records are
22 produced. The inmate waits in the holding cell
23 until their name is called. When they are called,
24 they go into the dental services room at which point
25 the dental professional does whatever procedure or

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1 examination that they are scheduled for.

2 At this point in the dental services
3 room the Rutgers University Professional Health
4 employee, either at the contemporaneous time
5 conclusion of the visit or shortly there afterwards
6 creates a medical record at which point they
7 indicate what radiography has been collected, what
8 samples or procedures have been performed and a SOAP
9 analysis, which is an acronym, I believe stands for
10 symptoms observations analysis and prognosis.

11 Q. Thank you. Before we go any further, I
12 note you are reviewing documents you brought with
13 you.

14 Can you explain to us what documents
15 you have in your hand, please?

16 A. Sure. I'm providing a document in my
17 hand to you, Counsel.

18 Q. Thank you.

19 A. I'm handing it to her right now. She
20 is observing it. I would like it for the court
21 reporter to mark it as Exhibit A.

22 Q. Could you tell me, it appears to have a
23 series of three letters. Almost appears like
24 initials.

25 Would you care to explain to me what

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1 they or --

2 A. That's work product privilege.

3 Q. So if it's work product, I don't want
4 it. But I want to understand what you are reviewing
5 for purposes of the deposition.

6 A. If you like, I could definitely make
7 copies of this and provide it to you.

8 Q. You can mail those to me. That will be
9 fine.

10 A. Will do.

11 Q. Are you able to tell us how these
12 documents are being used for purposes of the
13 deposition today?

14 A. That would be work product privilege.

15 Q. In addition, besides the kiosks, are
16 there. Any other forms you, as an inmate, would
17 fill out in order to have a dental appointment?

18 A. There are also paper forms which an
19 inmate could fill out to leaving in wooden medical
20 services box on the unit.

21 Q. How often -- you said earlier that
22 there were biannual exams.

23 Is that correct?

24 A. That is correct.

25 Q. Are there cleanings as part of the

Page 20

1 biannual exams or separate appointments, if you
2 know?

3 A. As far as I'm aware the biannual
4 cleaning is distinct from the biannual exam.

5 Q. So, you mentioned earlier that you have
6 not had any cleanings since early in 2021.

7 Have you had any biannual exams since
8 early 2021?

9 A. Hum. There are writings that would
10 refresh my recollection.

11 Q. Do you recall --

12 A. Excuse me, Counsel. I'm speaking right
13 now.

14 Q. I apologize. I thought you were
15 finished.

16 A. Good. So, in early of 2021, I believe
17 Springtime, the traffic control records of me going
18 to the North Compound for a biannual prophylaxis
19 exam. There are also health records that exist that
20 were produced by New Jersey Department of
21 Corrections and Rutgers University Correctional
22 Health Care officials respectively.

23 Thereafter, at the end of 2021, in the
24 weeks leading up to Christmas, I was called from my
25 unit on Six Right of New Jersey State Prison to the

1 North Compound Clinic. On this date, which a
2 writing would refresh my recollection of, there was
3 traffic control records created that showed I went
4 to the North Compound Clinic.

5 At this time I do believe that I was
6 scheduled for a biannual exam. However, on this
7 date, after an x-ray was made of my mouth in which
8 Samuel Lopez used an x-ray machine after getting me
9 to bite on a lead something, made an x-ray of my
10 tooth No. 14 after which he sent me to the dental
11 services room chair adjacent to the one where he
12 performed the x-ray where your client, Ronald Riez,
13 did periodontal dental surgery on my tooth No. 14.

14 These writings that would refresh my
15 recollection of what date and what time this
16 occurred, just to reiterate, are the Six Right
17 officers' logbooks; Six Right, the traffic control
18 booth traffic log; the North Compound Clinic officer
19 logbook and North Compound Clinic traffic control
20 pass logbook.

21 I've finished answering. Thank you.

22 Q. Now, you mentioned Lopez.

23 Do you understand what his position is?

24 A. As far as I'm aware he is a dentist
25 which means he is a doctorate in dental surgery.

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1 Is that correct?

2 Q. I believe so.

3 Do you know what Mr. Riez's position
4 is?

5 A. I am uncertain of the significance of
6 his position. I do know he is a dental hygienist.

7 Q. Okay. How about Joel Bernard? Do
8 you know him?

9 A. Joel Bernard is a doctor of dental
10 surgery as far as I'm aware.

11 Q. Thank you. Let me ask you:
12 Have you had dental cleanings by
13 Mr. Riez?

14 A. Yes.

15 Q. Approximately, how many, if you know?

16 A. There are writings that would refresh
17 my recollection. I know for sure I had one in early
18 2019.

19 It's been half a decade, but I remember
20 going to the North Compound Clinic in 2019 and I may
21 or may not have had a dental cleaning at that time.
22 These records, these writings that would refresh my
23 recollection are the traffic control records as well
24 as the medical records produced by the Rutgers
25 University Health Care.

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1 Q. Just for the record, Mr. McGillvary, do
2 you have copies of your medical records from 2019
3 through 2021 currently?

4 Not here, but do you have them?

5 A. Individually? Each record?

6 Q. Do you have a set of medical records?

7 A. In order to answer that question, I
8 would have to break it down to the different medical
9 records.

10 Q. How about the dental records?

11 A. Excuse me, Counsel. I'm still
12 answering the question.

13 Q. Okay.

14 A. I have some records. However, there
15 are medical records which have not been provided to
16 me.

17 For instance, when I first arrived at
18 this facility in 2019 I was called to the North
19 Compound Clinic. While I was at the North Compound
20 Clinic, the dentist, Samuel Lopez, created x-ray
21 images of my mouth. He had me bite on a lead thing;
22 he used an x-ray machine to take radiology of the
23 left side of my mouth; the front side of my mouth
24 and the right side of the -- my mouth.

25 He also, as far as I'm aware, the Board

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1 of Dentistry of New Jersey requires dentists to
2 create charts of their patient's mouth which they
3 have graphical depictions of the top and bottom rows
4 of teeth and on these charts they make marks. They
5 write in the significance of these marks to indicate
6 whether there was preexisting dental surgeries or
7 cavities or missing teeth present on each of the
8 spaces of these charts. I was not provided with
9 either the x-rays nor these dental charts upon
10 request.

11 I'm aware it's judicially noticeable,
12 in fact, HIPAA and New Jersey, access to public
13 records and access to public health care records
14 requires Rutgers University to keep and the
15 dentists, themselves, keep records of these health
16 records for my perusal upon request. Although I've
17 requested these, I've not received these.

18 Moving forward, from that point I was
19 also called back, I believe, at the beginning of
20 2020 because the x-ray created of my mouth indicated
21 that I had a cavity on one of my teeth. That was
22 not tooth No. 14. A writing would refresh my
23 recollection as to what this tooth was. That
24 writing is the medical record created by Samuel
25 Lopez when he performed a surgery on my other tooth.

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1 I was not provided with the x-ray nor
2 with the dental charting for my visits in the
3 beginning of 2020 when he performed the surgery on
4 my tooth.

5 Q. Do you --

6 A. Excuse me, Counsel. I'm --

7 Q. I thought you --

8 A. -- still answering the question.

9 In 2021, when I was recalled to the
10 North Compound Clinic by Samuel Lopez doing the
11 x-ray on my mouth, I was not provided with that
12 x-ray. That was in the weeks leading up to
13 Christmas.

14 There is a writing that would refresh
15 my recollection as to what the date of that visit
16 was. This writing, which is the traffic control
17 records, which I previously defined. There are
18 other records also that have not been provided to
19 me.

20 In the beginning of 2022, there was a
21 visit by your clients and one of the dentists, who I
22 can't remember the identity of right now -- this was
23 shortly after my tooth filling fell out -- your
24 client had placed in my mouth which was a couple
25 weeks after lockdown and probably a little over a

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1 week after the new now (inaudible) date that I filed
2 a dental request for emergency dental request in the
3 kiosk.

4 The date after the filling fell out it
5 took almost the whole week for your clients and this
6 other dentist to visit me at my cell at which point
7 they seen there was a gaping hole in my tooth which
8 a tooth nerve was exposed. As a result of that they
9 scheduled me for a dental exam.

10 Approximately a month later I was
11 called to this exam, well over a week after the
12 lockdown had cleared, even though I had a gaping
13 hole in my tooth. When I got to this exam, Samuel
14 Lopez was there. He made an x-ray of my mouth which
15 he had me bite on this lead thing and put the x-ray
16 machine in the left side of my mouth and took an
17 image of my mouth.

18 Although I have requested for this
19 image to be provided to me, this x-ray image, he has
20 not provided this to me. In addition, I've
21 requested for the dental charting he is required as
22 a routine organizational practice by the board of
23 dentistry to create of my mouth and he has not
24 provided this dental chart of my mouth.

25 I'm finished answering your question.

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1 Thank you for your patience.

2 Q. My question was: Do you currently have
3 any dental health records on your person in your
4 cell? I understand what you don't have.

5 A. Counsel.

6 Q. I --

7 A. I respect your attempt to rephrase the
8 question. However, you asked me a very broad and
9 ambiguous question whether or not I have all of my
10 medical records which I was trying to parse and I
11 thought I did a very good job.

12 Q. Thank you. My question has changed a
13 bit: Do you have any dental health medical records
14 in your cell? On your person currently?

15 Do you have copies of any records?

16 A. I have copies of medical records which
17 were provided by you as part of discovery.

18 Q. Okay.

19 A. I also have copies of medical records
20 that were provided by Rutgers University Health Care
21 in response to a request. However, these are not my
22 full records. They do not contain x-rays; they do
23 not contain dental charts.

24 To answer your first question, no, I
25 do not have all of my medical records. To answer

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1 your second question, I do have some medical
2 records.

3 Q. Thank you.

4 A. My pleasure.

5 Q. Before we -- I'm going to show you your
6 complaint. We can walk through it. That can help
7 us with some of the dates and times.

8 I did want to ask you, prior to coming
9 to the New Jersey State Prison, had you seen
10 dentists on a regular basis?

11 A. Yes. Union County Jail I regularly saw
12 a doctor of dental -- doctor of dentistry, DDA. I
13 can't remember his name.

14 Q. How often did you see him?

15 A. There are writings that would refresh
16 my recollection. There were medical records created
17 by this dentist. Each of those visits they indicate
18 the date and the time of visit. However, I can't
19 recollect off the top of my head exactly how often it
20 was.

21 Q. That was during the 2013, 2019 time
22 frame?

23 A. That is correct. Yes.

24 Q. Do you have any sense -- I'm not asking
25 you to guess -- do you have any sense of whether you

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1 saw him annually? Biannually? Or more often than
2 that?

3 A. I believe it was annually. However, my
4 recollection isn't confident on this.

5 Q. Okay. Thank you.

6 (Handwritten Complaint,
7 received and marked as McGillvary
8 Exhibit 1, for identification.)

9 BY MS. RAYMOND-FLOOD:

10 Q. Mr. McGillvary, this has been marked
11 for identification as Exhibit McGillvary 1.

12 Just so you know, this document will
13 also be attached to the transcript so you will have
14 a copy with you when we send you the transcript.

15 A. Thank you. I'm holding the document in
16 my hand.

17 Q. Do you recognize this document?

18 A. I briefly am perusing the document.

19 Q. Sure. Take your time.

20 A. So can I respond to your question?

21 Q. Sure.

22 A. From my brief perusal of this document,
23 it appears to be my first complaint in this action.

24 Q. Did you -- let me ask you this:

25 If you flip to page 39 of the document

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1 and the numbers are on the bottom center of this
2 page or those pages.

3 A. I'm looking at page 39 which is
4 indicated as page ID:82.

5 Q. Correct.

6 A. Document 3 on the docket of this
7 action.

8 Q. Correct. I note that there is a
9 signature above your name.

10 Is that your signature?

11 A. Under the words, "I declare under
12 penalty of perjury pursuant to the penalty
13 28USC1746, that the foregoing statements are true
14 and accurate to the best of my knowledge and
15 belief."

16 I've executed this the 30th day of
17 November, 2022 on this document.

18 Q. So, is that your signature?

19 A. That is my signature on this document.
20 Yes.

21 Q. Good. So, am I correct you prepared
22 this document and you signed this document?

23 A. From what I can see from my brief
24 perusal of this document, this is the document I
25 prepared. However, with the advancement of A.I.

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1 technology, I have not had a chance to see if A.I.
2 copied my handwriting and replaced a page.

3 Q. I'll represent to you this came
4 directly off the court docket. So, to my knowledge,
5 this is the document that you filed with the federal
6 court on November -- December 2nd, 2022?

7 A. Great. So the document that I filed is
8 Document 3 on the document of this document. This
9 is a document I prepared myself that has my personal
10 signature attached to it.

11 Q. Thank you.

12 A. It's monographic, too.

13 Q. I am sorry?

14 A. It's monographic. I wrote the whole
15 thing in my handwriting.

16 Q. That was going to be my next question.
17 Is that your handwriting you prepared
18 in your own handwriting?

19 A. Document 3 from the document was from
20 my handwriting. Yes.

21 Q. So, let's walk through some of this
22 document. It will help clarify some of the
23 questions I have.

24 If we go to page 5 of the document, on
25 the bottom it states, "In a nutshell, this case is

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1 about a confederacy of health care professionals who
2 deliberately injure patients for profit."

3 Do you see this?

4 A. I object under federal rule of evidence
5 1006. That's not the full statement.

6 Q. No. It's not. Not if the --

7 A. In the kind of health care professional
8 "who deliberately injure patients and who got caught
9 red handed destroying and fraudulently altering
10 medical records to cover it up afterwards."

11 Q. Okay. So that is what that sentence
12 reads in completion.

13 I would like to focus you on the
14 section that says, "This case is about confederacy
15 of health care professionals who deliberately injure
16 patients for profit," which is only a portion of
17 the -- (inaudible)

18 What is the basis for you making that
19 statement that "health care professionals
20 deliberately injure patients for profit"?

21 What is the basis? Why do you believe
22 that to be correct?

23 A. During the dental visit in the weeks
24 leading up to Christmas of 2021, when your client,
25 Ronald Riez, was performing work on my tooth 14, I

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1 had a conversation with him which I asked him why he
2 would work in a prison and he said that the pay was
3 better.

4 I don't remember verbatim what he said
5 at this present time. However, there is a writing
6 that would refresh my recollection. I'm holding it
7 in my hand.

8 Would you like to me to turn to the
9 page where it says that?

10 Q. We are going to get there.

11 A. I'm not finished answering, Counsel.

12 Q. Okay?

13 A. When I went back in the Summer of 2022
14 for a biannual prophylaxis, there was another inmate
15 in the holding cell with me. His name was Daniel
16 Lawrence. He indicated that he was going to sign a
17 refusal because the dental hygienist who was going
18 to perform the cleaning was your client, who I
19 recognized from sight, deliberately breaks an
20 inmate's tooth because he gets paid by the
21 procedure.

22 Q. Did Mr. Lawrence tell you how he knew
23 that?

24 A. Not that I can recall.

25 Q. Did Mr. Lawrence have a broken tooth?

1 If you know.

2 A. Oh, you just jogged a recollection.
3 Thank you for that.

4 Q. You are welcome.

5 A. After I got back from the refusal, I
6 asked other inmates at Six Right, one of the other
7 inmates, Lashawn Fitch. Lashawn Fitch also had a
8 broken tooth caused by one of your clients, Rutgers
9 University Health Care. His tooth was also left
10 with an exposed nerve for a couple months and he
11 said he believed your client got paid by the
12 procedure for the destruction of inmate's teeth. He
13 didn't indicate how.

14 However, he did indicate that your
15 client, Rutgers University Correctional Health, had
16 entered into a settlement agreement with him wherein
17 he was provided with a dental provider from outside
18 of New Jersey State Prison to give him dental care
19 because of the actions of your client, Rutgers
20 University Correctional Health, who employs your
21 individual client, Ronald Riez.

22 So that's two different witnesses that
23 have said your client, Ronald Riez, or your client
24 Rutgers University Health Care, were made by the
25 procedure for the destruction of witness's teeth.

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1 Q. Did any other individuals in the prison
2 that provided you with information regarding either
3 their dental care for or anything else related to
4 Mr. Riez?

5 A. Excuse me? That sentence, in
6 particular, are you asking me if there are any other
7 inmates?

8 Q. I'll rephrase the question.

9 A. Thank you.

10 Q. Have you had any other discussions with
11 any other inmates regarding your dental health care?

12 A. Yes. The day after I got back --
13 excuse me -- later on the day when I signed the
14 refusal, when I talked with inmate Daniel
15 Lawrence -- I asked around to other inmates. I
16 followed up the next day asking other inmates.

17 However, at the present time, I do not
18 recall what their names or IDs were. However, there
19 were at least three other inmates who indicated that
20 Rutgers University Correctional Health Care
21 deliberately injures patients and thereafter
22 collects money for it. They didn't specify how.

23 Q. Do you know whether that was in
24 connection with dental treatment?

25 A. That was definitely in connection with

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1 dental treatment because that's all I was asking
2 about.

3 Q. Do you recall anything about these
4 individuals, even if it was theirselves?

5 A. I remember there were people of color
6 who were taking showers at the same time I was. I
7 was asking them about it.

8 Q. Okay. So, other than your discussions
9 with various inmates, is there any other basis for
10 which you state that the health care professionals
11 deliberately injure patients for profit?

12 Any other reason you believe that?

13 A. Well, since you've asked, it is
14 traditionally notable in the New York Times, Blue
15 Shodly (phonetic), known as "The family." They have
16 different chapters such as Lords of Discipline in
17 Essex. They have another in New Jersey State
18 Prison. These are white supremacists.

19 They take bribes for performance and
20 nonperformance of acts in the course of their
21 duties. These bribes are given in different
22 (inaudible) as a copy (inaudible) and as they are
23 passing through on the way to and from shifts.

24 It is possible because of this routine,
25 organizational practice that one of the police union

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1 members, who's a part of this criminal enterprise,
2 engaged in bribery with your client, Ronald Riez,
3 whereby he was paid in cash surreptitiously by the
4 passing off of a copy (inaudible) of or another
5 modality. He was paid in funds not recorded and
6 there -- they were outside of the course of his
7 employment duties.

8 Q. Why do -- did you believe this?

9 A. Because it's a routine organizational
10 practice of the New Jersey police who were members
11 of the New Jersey Policeman's Benevolent Association
12 to pay for the performance and the nonperformance of
13 acts, which are designed to harm, threaten,
14 intimidate or otherwise obstruct litigants who
15 litigate against them. Government officials who are
16 allied with them or organizations to which they
17 benefit from.

18 Q. Do you have any personal knowledge that
19 Mr. Riez was involved with any of these individuals
20 you've referenced from this article?

21 A. I have personal knowledge that Mr. Riez
22 interacts with members of the Policeman's
23 Organization Local 105 every time he comes in work.
24 All of these are members of the statewide PBA.

25 Q. How do you know that?

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1 A. Because every local of the Policeman's
2 Benevolent Association is mandatory, a member of the
3 statewide PBA.

4 Q. When you say Mr. Riez interacts with
5 this position here at the New Jersey State Prison or
6 you know something else?

7 A. I know for certain he does as part of
8 his position here at the prison. I'm unaware of
9 what his extracurricular activities are.

10 Q. If we can move to page 6 of the
11 document, we -- in the paragraph 2 you state that
12 "Prior to entering the care of New Jersey State
13 Prison, dental care providers on May 31, 2019,
14 plaintiff never had any fillings or dental surgery
15 whatsoever performed on tooth 14."

16 Is that correct?

17 A. Everything you just read is correct.

18 Q. And is it true and accurate that prior
19 to entering the care of the New Jersey State Prison
20 dental care providers on May 31, 2019, you never had
21 any fillings or dental surgery performed on
22 tooth 14?

23 A. That's correct. I may have --
24 (inaudible) surgery on tooth No. 14 prior to
25 entering the care of Rutgers University Health Care

1 on May 30, 2014.

2 Q. Did you ever have any fillings or dental
3 surgery prior to May 31, 2019 on tooth 14?

4 A. Yes.

5 Q. What were those procedures, if you
6 remember?

7 A. Off the top of my head I don't
8 remember. I was a lot younger. However, there are
9 writings that would refresh my recollection. These
10 writings in the dental (inaudible) required to be
11 prepared of my mouth at top and bottom rows were
12 created as part of the routine organizational
13 practice of dental, licensed by the board when I was
14 in Union County Jail and also here in the New Jersey
15 State Prison.

16 Q. Do you recall, without the records,
17 whether you ever had any cavities before May 31,
18 2019?

19 A. I do. Otherwise I would not have
20 fillings.

21 Q. Okay. Do you have any idea of which
22 tooth you had cavities in which were then required
23 fillings prior to May 31, 2019?

24 A. It would help of me to look at the
25 inside of my mouth because there are fillings in

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1 those too.

2 Q. Do you have any estimate how many,
3 approximately, how many fillings you have in your
4 mouth?

5 A. I can't recall off the top of my head.
6 As I said, that was over ten years ago.

7 Q. That's true.

8 A. I take very good care of my teeth.

9 Q. So, okay. That's fine.

10 So, it is true that you have other
11 fillings in your mouth that occurred prior to
12 May 31, 2019, regardless how many you do have, some?
13 Correct?

14 A. There are some.

15 Q. Okay. You ever --

16 A. However, I want to clarify.

17 They are from when I was really, really
18 young. Before I reached the age of -- majority --
19 they were from as when I didn't take as good care of
20 my teeth. Since having these, I've taken meticulous
21 care of my teeth.

22 Q. I want to know if you had any other
23 fillings in your mouth.

24 A. I do.

25 Q. So if we can keep going, there is a

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1 reference in paragraph 3 to a visit scheduled for
2 June 7, 2019 for a tooth cleaning that you were
3 unable to attend.

4 Do you have any recollection as to why
5 it was you were unable to attend that tooth cleaning
6 June 7, 2019?

7 A. I do not recall off the top of my head.
8 However, there are writings that would refresh my
9 recollection. These are the traffic control records
10 which I previously indicated and also the officers'
11 logbook at the unit I was housed on at that point in
12 time which I can't remember off the top of my head.

13 Q. That's fine. I'm trying to get your
14 general recollection without the documents at the
15 moment.

16 If you go further down this
17 paragraph -- I am sorry. Further down to paragraph
18 4, it talks about, and I'm summarizing, feel free to
19 review it carefully, "On June 11, 2019, plaintiff
20 was examined by Samuel Lopez D.M.D."

21 And it states that "as part of this
22 examination, plaintiff's mouth was radiographically
23 imaged by Panorex to show what fillings he had."

24 Do you see that?

25 A. I do.

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1 Q. I read only a portion of the sentence.
2 I want to stop there for a moment.

3 A. It's not the full sentence and federal
4 rule of evidence 1006. Read the full sentence.

5 Q. I read the full sentence. I didn't
6 read the whole paragraph.

7 A. "The dental records of other inmates
8 imaged by the Panorex before and after this date, as
9 well as maintenance records of the Panorex machine
10 and related fiscal expenditure records show and are
11 believed to show that the Panorex was in good
12 working condition before and after this date with no
13 intervening maintenance performed on it."

14 I would like to define the word
15 "Panorex."

16 Q. I asked --

17 A. You asked me -- talked over any --
18 (crosstalk) -- and I have to finish saying the
19 entirety of the writing, which you are excerpting
20 the (inaudible) define comes from, I believe, the
21 (inaudible) which means all and/or recollection
22 which means earlier on in this deposition I
23 described when Dr. Samuel Lopez used an x-ray
24 machine that was on a beam table swinging crane arm
25 and took an image of the left side of my mouth, the

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1 front of my mouth and right side of my mouth.

2 When I wrote this, it was my
3 understanding of that term that the machine he used
4 to do that was termed a Panorex.

5 Q. What is --

6 A. You should know.

7 Q. What was your basis of your
8 understanding it was a Panorex?

9 A. The logical route of the record means
10 Panorex when he took an x-ray of all of my mouth I
11 assumed because of the term of the device that that
12 was what that was called.

13 Q. Do you know -- did you see the word
14 "Panorex" on the machine itself?

15 A. That is a negative.

16 Q. Did anyone tell you that Dr. Lopez was
17 using a Panorex machine?

18 A. Nobody told me he was using a Panorex
19 machine. However, he did say that I am going to
20 take an x-ray of your mouth. Okay?

21 Q. So we have no dispute as I understand
22 your mouth was x-rayed. What I understand there is
23 a question what -- as to what type of machine was
24 actually used.

25 Is that correct?

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1 A. If you are conceding there is no
2 dispute, my mouth was x-rayed. Hundred percent
3 correct. My mouth was definitely x-rayed on this
4 day.

5 Q. You believe your mouth was x-rayed.
6 My question is, how do you know it was
7 x-rayed by a Panorex?

8 A. I'll be the first to admit I don't know
9 what a Panorex looks like.

10 Q. Okay.

11 A. I do know that the x-ray machine that
12 he used on my mouth was on a metal crane arm, looked
13 kind of like an elbow, two handles on either side of
14 it. He put it up to my mouth and held it
15 approximately six inches from the left side of my
16 face and made me bite on the same lead thing and
17 moved it around to the front of me and left the lead
18 thing inside of the mouth and made another image on
19 the right side of my mouth.

20 This machine, what was on the elbow
21 crane arm was what I believed he was referring to
22 when he said Panorex.

23 Q. Let me ask you:

24 While he was taking the images of your
25 mouth, do you have any recollection of whether he

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1 took one complete picture or whether he took three
2 separate snapshots.

3 If you remember.

4 A. I do not have the technical expertise
5 to answer this question.

6 Q. Okay. That's fair.

7 A. If you would like me to speculate.

8 Q. No. I don't want you to speculate.

9 Let's go down further in this paragraph
10 which is the second sentence you already read and
11 you referenced "maintenance records of the Panorex
12 machine and related fiscal expenditure records."

13 What maintenance records are you
14 talking about?

15 A. The machine that I described is still
16 located in the North Compound Clinic. From time to
17 time machines such as that break down. When these
18 parts break down they must be replaced. There is
19 wear and tear on the machines. They have film
20 rolls, they have possibly electronic links like
21 fiber optics, USB ports. Each of these parts of
22 this machine eventually break down and must be
23 replaced or fixed.

24 The records of each of these parts that
25 have worn down must be replaced or fixed is what I

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1 was referring to as the maintenance records.

2 Q. Have you ever seen them?

3 A. No. But it's common sense. A machine
4 will have maintenance records.

5 Q. What about the physical expenditure
6 records.

7 Have you ever seen those?

8 A. It's a very broad question. I'm going
9 to try to parse it.

10 I have seen there are salary statements
11 for New Jersey dentists, I believe, in the stuff you
12 sent me where he has a time sheet. I know there are
13 fiscal expenditures relating to wages. You also
14 indicated in representations to me there are orders
15 of dental records, namely amalgamated, namely
16 Lidocaine, they come in certain units.

17 Likewise, it flows from logical
18 conclusion if there is a routine organizational
19 practice in making orders which inventories any
20 parts of any nonrenewable resource like film that's
21 required for this machine, would need to be kept at
22 Rutgers University Health Care and/or the New Jersey
23 Department of Corrections.

24 Q. Okay. So I understand you are making
25 an assumption based on logic the records exist.

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1 Is that right?

2 A. I'm making an observation based on the
3 routine or at the request of New Jersey Department
4 of Corrections, as has been demonstrated by
5 documents which you have provided for me.

6 Now, on paragraph 5 there is a
7 reference -- excuse me, Counsel. I am sorry to
8 interrupt. You just turned your page.

9 Which page are you turning to?

10 Q. Page 7.

11 A. Thank you.

12 Q. On paragraph 5 of page 7, I will read
13 the entire paragraph. "On June 26, 2019, Riez
14 performed a teeth cleaning on plaintiff. Riez made
15 a record of this in which he indicated 'routed to DA
16 for continuation of TX.'"

17 Did I read that correctly?

18 A. Counsel, you have not read a sentence
19 at the top of this page. Is -- that is part of
20 paragraph 4?

21 Q. I'm not reading --

22 A. Excuse me. You know what, Ma'am? I
23 would like -- (crosstalk) -- this is the third time
24 you've spoken over me during this deposition. I'm
25 asking, you know, please stop abusive harassment

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1 talking over me when I'm trying to finish my answer.
2 If you do not, I'll have to pause this deposition
3 and move for a protective order.

4 What I was saying in response to a --
5 what you were reading was a faithful rendition of
6 what is written on this document. I notice that
7 part of paragraph 4 you had left out was "this
8 examination was performed as an inevitable
9 consequence of Riez making the entry in paragraph 3
10 routed to DA for dental intake."

11 Now, in this context, which is required
12 by the federal rule of (inaudible) for completeness
13 of the paragraph you just read paragraph 5 says, "On
14 June 26, 2019 Riez performed the teeth cleaning on
15 plaintiff. Riez made a report of this in which he
16 indicated 'routed to DA for continuation of TX.'"

17 I'm finished. Thank you.

18 Q. Mr. McGillvary, because you feel
19 compelled to continue to put things on the record,
20 I'm also going to add to the record.

21 I'm entitled to ask you about a
22 specific paragraph, the entirety of paragraph 5. If
23 I do have any questions about paragraph 4, which is
24 why I didn't read it, I would appreciate if you
25 would specifically answer the questions I'm

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1 directing to you. If you think there is something I
2 left out, that's fair, but I was specifically
3 addressing paragraph 5.

4 So let's go to paragraph 5, which we've
5 now both read into the record. I wanted to ask you
6 about that specific cleaning by Mr. Riez that you
7 allege on January 26, 2019. My first question is:

8 Do you have a recollection, as you sit
9 here today, of the January 26, 2019 cleaning?

10 A. I have a vague recollection of it.
11 Doesn't stand out vividly in my mind, but this
12 writing has definitely helped my recollection. Yes.
13 Thank you.

14 Q. So, does this writing, which is your
15 writing, work to help refresh your recollection as
16 to the cleaning on June 26, 2019?

17 A. That is what I said. Yes.

18 Q. So, were there any -- let me ask you
19 this:

20 Do you recall during this June 26, 2019
21 cleaning what equipment, if any, Mr. Riez used?

22 A. I recall that Mr. Riez used a dental
23 drill. He used a dental drill that had a detachable
24 tip on it.

25 Q. What makes you think it was a drill?

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1 A. Because of the high-pitched whining
2 sound it made.

3 Q. Did you have any issues following the
4 cleaning on June 26, 2019 that Mr. Riez did to your
5 teeth?

6 A. My teeth were very sensitive to hot and
7 cold liquids following this cleaning from my
8 recollection.

9 Q. Okay.

10 A. That has been refreshed by this record.

11 Q. Any other issues?

12 A. Not from that particular cleaning. No.

13 Q. Now, in paragraph 6 there is a
14 reference to dental surgery on tooth No. 3. You can
15 certainly read the entire paragraph 6 to yourself.
16 My question is:

17 If this refreshes your recollection as
18 to what the dental surgery on tooth No. 3 -- the
19 dental treatment on tooth No. 3 on January 7 of
20 2020, acting on information from the Panorex in
21 paragraph No. 4, Lopez performed dental surgery on
22 plaintiff's tooth No. 3, this treatment was
23 performed as an inevitable consequence of Riez
24 making the entry in paragraph No. 5 routed to DA for
25 continuation of DX.

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1 A. I've finished answering.

2 Q. Well, you read me the paragraph, but
3 you -- do you have a recollection of what this specific
4 dental surgery was on tooth No. 3?

5 A. I recalled that Lopez used his dental
6 drill to prepare of -- the area of the tooth after
7 inserting a needle that had a carp of Lidocaine in
8 it to -- used to anesthetize the surrounding area of
9 the tooth he operated on.

10 After he used this carp of Lidocaine,
11 he used the dental drill to prepare it and used
12 amalgam of some sort which he prepared and placed
13 into the tooth.

14 Q. Is it your understanding he was filling
15 the tooth once he did the drilling?

16 A. It was my understanding that he did a
17 filling procedure on my tooth.

18 Q. Did you understand there had been a
19 cavity in that tooth?

20 A. It was my understanding there was a
21 cavity in that tooth he had taken an x-ray of.

22 Q. Just so we are clear, tooth No. 3 is
23 not part of this lawsuit.

24 Is that correct?

25 A. That is correct. Except for what

1 you've just read as a context for routed to DA for
2 continuation of TX.

3 Q. Let me ask this question then:

4 Why is that relevant to this lawsuit?

5 A. Because of paragraph No. 4, the part
6 you had left out where he routed to DA for dental
7 intake which dental intake Lopez performed the
8 x-rays of my mouth.

9 Q. Is there an issue with routing you to
10 the dentist by the dental hygienist or is that part
11 of the process? I'm trying to understand how it
12 relates.

13 A. If you recall later on in this
14 deposition I stated in Spring of 2021 I went for a
15 biannual prophylaxis with your client, Rahmo Riez,
16 for continuation is because your client Rahmo Riez
17 indicated in the medical report that was created of
18 that Spring 2021 by prophylaxis that I was routed to
19 DA for continuation of TX. Because of the routine
20 organizational practice of Rutgers University
21 Correctional Health Care scheduling, for an inmate
22 to return for x-rays after your client writes such
23 things in the medicine report, it is very salient
24 that particular type of entry is pointed out for
25 those reasons.

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1 Q. Would you say that the Mr. Riez's entry
2 of routing you to the dentist for dental intake or
3 x-rays or whatever the next step is, is a negative
4 issue or something that is part of his job to get
5 your continued dental care?

6 I'm trying to understand.

7 A. I would say it indicates I --
8 thereafter, a record was created. The fact he wrote
9 it, it says standing alone is not good nor bad. The
10 fact the -- and thereafter, the medical record for
11 me going to back to the North Compound Clinic and
12 receiving a filling procedure on my tooth No. 3,
13 plus the fact that that medical record is now
14 missing is something that is very wrong. Medical
15 records like that should not go missing.

16 Q. So the one with respect to the June 26,
17 2019 is your indication that Mr. -- I want to
18 understand that Mr. Riez indicated on the medical
19 record you were going to see the dentist and in fact
20 saw the dentist.

21 Is that fair for purposes of this one?

22 A. You are saying on paragraph 5 when he
23 would route to DA for continuation of TX?

24 Q. Right.

25 A. That was after going back to the

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1 dentist on January 2nd of 2020 for continuation of
2 TX. TX is a short form for treatment.

3 Q. That is what happened. Correct? You
4 then went for treatment?

5 A. Approximately six months later I went
6 back for treatment. Yes.

7 Q. As you sit here today, do you recall
8 whether there were any visits between June 2019 and
9 January 2020?

10 A. I can't recollect off the top of my
11 head. It's been almost half a decade.

12 Q. If we flip now to page 8, paragraph 10,
13 bottom of page 8, there is a reference to an
14 April 15, 2021 cleaning by Mr. Riez.

15 Do you see that?

16 A. The whole thing says he performed the
17 teeth cleaning on plaintiff. Riez made a report of
18 this in which he indicated "routed to DA for
19 biennial exam/x-ray and routed to DMD for
20 co-signature."

21 Q. That's a correct reading of paragraph
22 10. My question is:

23 Do you recall the visit on April 15,
24 2021 in which Riez performed a teeth cleaning on
25 you?

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1 A. That I -- that was the visit I referred
2 to earlier on in Spring of 2021.

3 Q. Okay.

4 A. My recollection is Riez wrote it was
5 April 15, 2021.

6 Q. So at least, according to this
7 complaint, we have at least two visits you had with
8 Mr. Riez for dental cleaning.

9 Is that correct?

10 A. That is correct.

11 Q. Were there any issues that resulted
12 from the April 15, 2021 dental cleaning by Mr. Riez
13 of your teeth?

14 A. Afterwards I had extreme sensitivity
15 from my enamel coming into contact with hot or cold
16 liquids.

17 Q. Did you report that or go back to see a
18 dentist about this sensitivity?

19 A. I did not.

20 Q. Did the sensitivity go away after a
21 certain period of time?

22 A. Yes.

23 Q. Is that the same for the prior visit as
24 well? The sensitivity went away as well?

25 A. The prior tooth cleaning?

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1 Q. Prior tooth cleaning.

2 A. Prior tooth cleaning. Yeah.

3 Q. I would like to take you through No. 11
4 because I have some questions as to the date
5 sequence. I'm going to read this in pieces. We can
6 certainly read the rest in a minute.

7 You say paragraph, "On date subsequent
8 to April 15, 2021, but before the date of 12,
9 plaintiff was recalled to Lopez for a dental exam
10 and x-ray."

11 When I looked down at 12 it appears you
12 are talking about a period leading up to the
13 Covid-19 lockdown in December of 2021.

14 So I'm trying to understand in 11, is
15 the period of time you are talking about between
16 April 15th, 2021 and December 2021?

17 A. I'm sorry. You just talked in circles
18 around me. I don't understand the question.

19 Can you please repeat?

20 Q. I'm trying to understand what you
21 wrote. You referenced a day subsequent to April 15,
22 2021 but before the date of 12.

23 A. Uh-huh.

24 Q. And then in 12 you say, "During the
25 period leading up to the Covid lockdown in

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1 December 2021."

2 A. Yeah.

3 Q. So, I'm trying to figure out what the
4 time frame is, what you are talking about in
5 connection with this recall by before Lopez for
6 dental exam and x-ray.

7 Am I correct to believe that the timing
8 for that recall is between April 15, 2021 and
9 December of 2021, according to the way you drafted
10 this?

11 A. In order to answer your question I
12 specified the -- yeah, I drafted this. I'm not a
13 lawyer. I have never been to law school. The most
14 I've done is read some books in the law library how
15 to put together a civil rights complaint. I feel
16 sometimes like I'm stuck in the middle of a forest
17 with no map when it comes to writing out this
18 complex legalese stuff. Certainly, when I was --
19 (inaudible) four years ago I was far less fluid in
20 legal terms.

21 When I wrote this two weeks leading up
22 to Christmas, when the lockdown happened around that
23 area, but it was after when I went and Riez, routed
24 to DA for the x-ray in order to indicate that the
25 two are related.

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1 Q. Okay.

2 A. I wanted to clarify. The x-ray that
3 was performed on the left side of my mouth by Lopez,
4 what I'm referring to, was on the same date he
5 referred me to your client, Rahmo Riez, to fill the
6 filling on my mouth, but the x-ray happened prior to
7 that.

8 Q. Is it your testimony that Mr. Riez
9 performed the work on tooth 14 and not Dr. Lopez?

10 A. You said his name defendant.

11 At any point leading up -- I need to
12 specify the identity of who you are talking about.

13 Rahmo, R-a-h-m-o, Riez, R-i-e-z. Is
14 that the proper legal spelling of his name?

15 Q. That's what I'm talking about
16 throughout --

17 A. Thank you.

18 Q. -- if I said Riez.

19 A. Thank you.

20 Q. That's fine.

21 A. I wanted to clarify.

22 Q. That's all we are talking about.

23 A. I'm explicitly stating it was Ronald
24 Riez that performed the dental surgery on my
25 tooth 14 and not Samuel Lopez even though he was

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1 present. Samuel Lopez sent me to the surgery on my
2 tooth 14.

3 Q. It's your testimony that Dr. Lopez was
4 present, but Mr. Riez, my client, actually did the
5 work on tooth 14?

6 A. With Samuel Lopez present in the next
7 room over. That's correct.

8 Q. What is the date that that happened?

9 A. A writing would refresh my
10 recollection. This writing is the traffic control
11 records for the date which this occurred.

12 To narrow the amounts of when this
13 would be, the officer log Six Right, traffic control
14 both roll logs, the North Compound Clinic officer.

15 The North Compound Clinic traffic
16 control log would indicate me going to the North
17 Compound Clinic for this dental procedure. It is
18 one of the days and weeks leading up to Christmas
19 which are indicated on your complaint Rahmo Riez's
20 time sheets which you provided to me in response to
21 my subpoena for the Rutgers University Correctional
22 Health Care.

23 Q. So I am clear, it is your testimony
24 that Mr. Riez performed the surgery on tooth 14
25 sometime in the time period leading up to the weeks

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1 before Christmas in 2021?

2 Am I correct --

3 A. That is correct.

4 Q. -- about that?

5 A. Yes.

6 Q. Okay. If we focus on our paragraph 13,
7 which is on the next page.

8 A. Page 10.

9 Q. Correct.

10 A. I'm on page 10, paragraph 13.

11 Q. I want to understand this is where your
12 allegations indicate that you were recalled to the
13 North Compound Clinic of New Jersey State Prison for
14 a filling on tooth 14 and that Dr. Lopez allowed
15 Riez, my client, to perform the procedure on you.

16 Is this correct?

17 A. That is correct.

18 Q. Okay?

19 A. Excuse me, Counsel. I'm going to stand
20 up and briefly stretch my legs.

21 (Pause on the record.)

22 Just for the record, I'm on a stool.
23 That's different from the seats from which you are
24 sitting on.

25 Q. Would you like to switch?

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1 A. I wouldn't do this to a lady. No. You
2 are welcome to keep the chair.

3 Q. So, on paragraph 13 you also -- this is
4 a long paragraph. I would like to break it down.
5 We already covered the beginning.

6 This is, as I understand it, you
7 reference a conversation you had with Mr. Riez. And
8 so, I would like you to read this paragraph to
9 yourself and tell me if this is the discussion that
10 you had with him that you discussed earlier that he
11 said he made more money at the prison than in
12 private practice.

13 A. This writing refreshes my recollection.

14 This writing was made within a couple
15 months after the conversation back in 2022. This
16 paragraph, right here, definitely reflects what he
17 said.

18 I asked him why he worked in a prison
19 instead of private practice. Your client responded
20 by laughing derisively and stating, "I make money
21 here. I get paid by the procedure."

22 This is shortly before he applied the
23 dental drill to my tooth No. 14 so hard that it
24 hurt, despite the anesthesia and such that I could
25 smell the burnt tooth enamel. That was immediately

1 apparent to me.

2 Q. So, to be clear, in connection with the
3 your allegations as I understand them, is that
4 Mr. Riez used a drill hard on your tooth. Correct?

5 A. Those are part of my --

6 Q. Part of your allegations. And I want
7 to know that it was this visit sometime leading up
8 to Christmas of 2021 in the December 2021 time frame
9 this alleged incident occurred.

10 Is that right?

11 A. I need to mark down the incident to
12 define that term is when he used the drill to drill
13 into my tooth 14. After he did that extremely hard
14 in a way that was intended to cause pain and
15 suffering, he then applied amalgam which was there
16 to the hole that he had done into my tooth 14.

17 Now, the incident itself is comprised
18 of him pressing the drill to create a cavity and a
19 fracture in the tooth itself after which he put in
20 amalgam while the fracture undermined the structural
21 integrity of the tooth. The entire procedure of
22 both the application of the drill with excessive
23 force as well as the application of the amalgam in a
24 surgical procedure was what I'm referring to.

25 Q. So I think that's where I'm confused.

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1 Was my understanding Dr. Lopez, based
2 on your testimony, located a cavity and then
3 allegedly sent you to Mr. Riez to have the repair
4 done. The surgery.

5 Am I incorrect that Dr. Lopez has
6 already located a cavity before you sat in the chair
7 with Riez according to this?

8 A. Are you talking about tooth 14 or
9 conflating --

10 Q. No. I'm talking about tooth 14.

11 A. This is 2021.

12 Q. (Nods)

13 A. Riez indicated in the April 2015 there
14 was a cavity present on tooth No. 14. When I
15 returned in the weeks leading up to Christmas of
16 2021, Dr. Lopez used the x-ray to create an image of
17 my tooth No. 14. There was indeed a cavity there
18 and then he sent me over on that same day to your
19 client Rahmo Riez at which point Rahmo Riez had a
20 conversation with me and as he finished saying that
21 used the dental drill to perform the incident that I
22 just defined.

23 Q. The incident was in connection with the
24 repairing of a cavity. Correct?

25 A. It was a cavity on tooth No. 14.

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1 Q. At that point it's your testimony that
2 Riez used a drill, a dental drill and applied it to
3 tooth 14 so hard it hurt despite the anesthesia.
4 Correct?

5 That's part of your allegation?

6 A. You said a lot of words. Sounds like
7 he used the drill aggressively he said.

8 Q. No. I used your words "he applied the
9 dental drill on tooth 14 so hard it hurt despite the
10 anesthesia."

11 A. That's correct.

12 Q. What kind of anesthesia were you under?

13 A. He applied Lidocaine -- Riez, not Lopez,
14 applied a carp of Lidocaine to the surrounding
15 tissue of tooth No. 14. He used a needle to do
16 this.

17 Q. And was the purpose of the anesthesia
18 to numb that area of the mouth?

19 A. That's correct.

20 Q. Was your mouth numbed?

21 A. It was numb, yet I still felt pain
22 despite that because of how hard he used the drill.

23 Q. Was Dr. Lopez in the room at any
24 portion of the time that Mr. Riez was allegedly
25 repairing the cavity including the drilling?

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1 A. Dr. Lopez was in his office which is
2 visible from the room which this was occurring. He
3 described the layout. There are two different
4 dental services rooms. The one where Riez was
5 performing the dental surgery was on the far left
6 side.

7 When you walk in the North Compound
8 Clinic there is another one to the right of that
9 room which has a door waylaid to it with no door on
10 it. This is another one besides that second room
11 which does not have a dental chair in it which is,
12 rather, the dentist office. Samuel Lopez was in his
13 office for the duration of that procedure. It was
14 within sight of where I was sitting. He could
15 observe the entire procedure at that time.

16 Q. Do you know whether he was observing?

17 A. I don't know. He -- it was out of my
18 field of vision.

19 Q. Can we go down to the next paragraph
20 which the first sentence of that paragraph reads,
21 "On January 11, 2022 the cusp of plaintiff's
22 tooth 14 broke off in plaintiff's mouth."

23 I can see it's not the complete
24 paragraph, but I want to talk about this sentence
25 first.

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1 A. I have a typo in this sentence.

2 Q. What is that?

3 A. January 11.

4 Q. Okay.

5 A. I don't think it was that day.

6 Q. What do you think the date was?

7 A. I think it was a couple days before
8 that. I'm not sure. There is a writing that would
9 refresh my recollection though.

10 Q. What was --

11 A. There is medical records created of the
12 emergency dental services slip I put it on the kiosk
13 I described early on. I described inmates
14 requesting medical services. I put in that request
15 in the very morning, very day after the cusp broke
16 off but I'm certain it was a single digit in
17 January. Might have been the 8th or 9th.

18 Q. Well --

19 A. If you have --

20 Q. I don't know if I have the document you
21 are referring to, but I do have a document that I
22 would like to show you to see if it helps one way or
23 the other.

24 I'm going to ask the court reporter to
25 mark that.

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1 (Document dated August 25,
2 2022, received and marked McGillvary
3 Exhibit 2, for identification.)

4 BY MS. RAYMOND-FLOOD:

5 Q. Mr. McGillvary, I'm handing you a
6 document marked for identification as McGillvary 2.

7 It appears to me to be a document that
8 was put into the kiosk. It is dated August 25,
9 2022. I don't believe this is the document you were
10 referring to but it does make a reference to the
11 date of the emergency slip that you put in as well
12 as the date that the -- of January 11 about the
13 cusp.

14 I'm going to show it to you to see if
15 it helps your recollection to see if that is the
16 correct or incorrect date in your complaint.

17 A. Oh. This document does say January 11
18 cusp, same molar, January 2 emergency dental
19 request. However, I'm fairly confident it was
20 before that. There was a single digit. Although
21 this does say that, I have grave misgivings this is
22 not the correct date.

23 Q. Let me ask you:

24 The document you are holding, do you
25 recognize that document?

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1 A. I do recognize this document. It was
2 created months after the document that I said would
3 refresh my recollection.

4 So, my recollection, immediately after
5 the cusp broke out, is far better contemporaneously
6 than it was before.

7 Q. So, it's your testimony you believe
8 that your January 11, 2022 date is incorrect and
9 that it, in fact, was earlier than January in single
10 digits in the approximately January 8 or 10 time
11 frame.

12 Is that correct?

13 A. I believe so. Yes.

14 Q. So, whether it's January 7 or
15 January 11 or some date in between there, explain to
16 us what happened, what you were doing and what
17 happened when the portion of the tooth broke.

18 A. I was listening to music on my bunk and
19 I noticed that my tooth felt like it was loose or
20 something and I felt -- I felt it with the tip of my
21 tongue and it cracked and there is a big chunk of
22 the tooth had come out. There was a hole inside of
23 my tooth. I could feel the nerve of my tooth there.

24 Q. Did you -- were you able to take any piece
25 of the tooth out with your hand? Did you see a

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1 piece?

2 A. I could not see a piece of the -- no.

3 Q. Let me ask this question: Between the
4 December 2021 dental surgery or filling and January
5 time frame when the tooth broke, did you have any
6 other issues between those dates related to that
7 tooth?

8 A. I had soreness in that area of my
9 mouth.

10 Q. Anything else? I am sorry. I didn't
11 mean to interrupt you.

12 A. I had soreness in that area of my mouth
13 from the time he did the operation until the time
14 the cusp fell out and thereafter it only got worse.

15 Q. And were you able to eat on this side
16 of your mouth during the December through January
17 time frame?

18 A. It's been a couple years. But I can't
19 remember at the present if I was -- started chewing
20 on the right side of my mouth after this or leading
21 up to it. But after the procedure itself -- I was
22 not eating on this side of my mouth after the cusp
23 fell out. I was not trying to get anything into
24 the tooth nerve because it was exposed.

25 Q. What did you do when the cusp fell out?

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1 A. Because it was evening time, I was not
2 able to get out to use the kiosk until the next
3 morning so I fretted about it and tossed and turned
4 and was largely unable to sleep until I got to the
5 kiosk to write the dental request form.

6 Q. In your next paragraph on page 11 of
7 your complaint you talk about an MR007 form you
8 filled out January 12 -- January 2022.

9 Is that the form you are referencing
10 the emergency form?

11 A. Is that the form you are referencing?
12 Are you talking about Exhibit McGillvary 2?

13 Q. I'm talking about the reference that
14 actually says Exhibit C, but on January 12, 2022,
15 put an emergency dental request MR007 form in on the
16 NJSP West Compound Six Right kiosk.

17 See that?

18 A. Oh, yeah. That's not the one I'm
19 holding in my hand you handed me.

20 Q. I did not mean to reference that
21 document.

22 So the document that's referenced in
23 paragraph 16 is not McGillvary 2, but it is another
24 emergency dental request MR0007 form. Correct?

25 A. Yes. That's the one I incorporated

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1 into this Document 3 of the document on this case as
2 Exhibit C. That's the one I sent.

3 Q. You put in an emergency dental request
4 on January 12, 2022.

5 Is that correct?

6 A. That is correct.

7 Q. If we go down to paragraph 18, this
8 references a January 14, 2022 visit by Lopez and
9 Riez to yourself.

10 Is that correct?

11 A. That is correct.

12 Q. Tell me what happened during that visit
13 and if you wish to review paragraph 18 to refresh
14 your recollection, feel free.

15 A. Dr. Lopez visited my cell, although
16 Bernhard created the report of this afterwards,
17 Lopez and your client Riez both appeared at my cell,
18 which I believe was written in the Six Right
19 officers' logbook for this date.

20 When they arrived in my cell, Lopez
21 looked inside of my mouth and he stated that I
22 needed dental surgery to fix my tooth, that it
23 couldn't happen until after lockdown was over.

24 Q. The lockdown you are referring to
25 relates to Covid.

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1 Is that correct?

2 A. The lockdown I'm referring to is
3 Covid-19 lockdown from Christmas 2021 until the
4 around the end of January 2022. There is writings
5 that will refresh my recollection for the exact
6 dates at which this lockdown occurred. These
7 writings are the traffic control records which are
8 in the custody and control of the New Jersey
9 Department of Corrections.

10 Q. Was it your understanding, during the
11 lockdown, that dental work could not be done?

12 A. Based on representation made to me by
13 Lopez at this visit that was my understanding.

14 Q. So, if we continue with your complaint,
15 it appears to me from your paragraph 19 that you
16 were seen by Dr. Lopez on February 1st, 2022 in the
17 North Compound Clinic.

18 Is that correct?

19 A. That is correct.

20 Q. And when you talk about the North
21 Compound Clinic, that is where you've been referring
22 to for the course of this deposition where your
23 dental work was being done?

24 A. The North Compound Clinic is the place
25 I referred to in the traffic control records. The

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1 records are created of me coming to and coming from
2 this entire deposition.

3 Q. It's the clinic where you were having
4 your dental work done?

5 A. North Compound clinics is where my --

6 Q. I wanted to make sure.

7 A. You had said he seen me first in 2022.
8 I want to find what I meant. He had seen me. Riez
9 radiograph imaged my tooth 14, apical x-ray which
10 is the same machine as the -- (inaudible) or
11 recollection. But as far as I'm aware, peri means
12 around and apical means a specific area where he
13 used the machine to photograph a specific area of my
14 mouth.

15 This x-ray showed a filling that was --
16 showed a filling intact and a cusp in the filling of
17 tooth 14 that broke off and that was important
18 because the filling itself was still in the tooth on
19 February 1st of 2022 and it was the cusp that had
20 been fractured by Rahmo Riez that it came off during
21 the lockdown. That's what I meant by he seen me. I
22 finished answering the question.

23 I would like to go back to this x-ray.

24 Q. How is it you draw a distinction
25 between the Panorex and periapical x-ray --

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1 p-e-r-i-a-p-i-c-a-l, for the court reporter -- why
2 is it you made -- how did you make a difference?

3 Did you talk about periapical?

4 A. I didn't mean to.

5 Q. How did you know the difference between
6 these two x-ray machines? How did you know the
7 difference, other than the language?

8 A. There is no reason other than the
9 language I would know.

10 What would I do, physiologically, peri
11 means round and apical came from the same word
12 "apogee" or specific area.

13 Q. So, but it's your testimony it was the
14 same machine with the arm that was used for this
15 x-ray as well as the prior x-ray.

16 Is that right?

17 A. The difference then, the distinction
18 I'm drawing is the etymology, Panorex means the
19 entire mouth and periapical means a specific area
20 around.

21 Q. I understand the distinction you are
22 drawing. I want to understand if it was the same
23 physical machine that was used.

24 A. Unless it was replaced between the two
25 times. I don't know.

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1 Q. Okay.

2 A. I don't have the technical knowledge to
3 be able to identify one machine from another. If
4 they went in there and removed one machine and
5 replaced it in the intervening time, I wouldn't be
6 able to recognize that to look at it. For all I
7 know it could have been an entirely different
8 machine but it resembled the first machine.

9 Q. Now, what is your basis or your
10 statement the tooth broke due to the dental drilling
11 of Riez?

12 Why do you say that?

13 A. A writing will refresh my recollection.
14 This document I'm holding in my hand on paragraph
15 20, it says on March 19 dentist Joel Bernhard
16 performed a filing on my tooth 14.

17 During this procedure, I asked Bernhard
18 why the cusp broke off and he specifically stated to
19 me "the structural integrity of the tooth had been
20 undermined from the inside."

21 Q. Did he say how it had been undermined
22 from the inside?

23 A. He didn't have to. There is only one
24 person who had access to the inside of that tooth.
25 It was your client, Rahmo Riez.

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1 Q. Did he discuss the possibility with you
2 the cavity or the decay on the tooth could have
3 potentially caused the undermining from the inside?

4 A. He actually said that.

5 Now, first of all, I want to refer back
6 to paragraph 18 that there was a report stating that
7 the area was chipped -- filling had a chipped --
8 filling stating there was a filling within the
9 tooth, not a cavity per se, but a filling was
10 already in the tooth.

11 Now back to paragraph 20. Joel Bernhard
12 said March 9, 2022, because of the delay in the
13 procedure, there would be permanent discoloration
14 that disfigured my tooth No. 14.

15 Q. I appreciate that, but I would like for
16 you to answer my question which is:

17 Did Dr. Bernhard discuss with you what
18 could have undermined the integrity of the tooth
19 from the inside? Specifically discussed with you
20 what would have done that?

21 A. I thought I answered that question just
22 now.

23 Q. I don't think so. So let's try it
24 again.

25 A. Can you rephrase it?

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1 Q. Sure.

2 A. Good.

3 Q. Did Dr. Bernhard state, you quoted him
4 as stating, "the structural integrity of the tooth
5 had been undermined from the inside."

6 Did he tell you what may have
7 undermined the structural integrity of the tooth?

8 A. There was an implication to it is that
9 the drill your client had used during the procedure,
10 that he performed in the weeks leading up to
11 Christmas 2021, which is what undermined it from the
12 inside.

13 Q. He didn't actually say that.

14 Is that fair?

15 A. He didn't say verbatim, but the --

16 Q. Why that is?

17 A. Nobody had access to the inside of my
18 tooth.

19 Q. Let me ask this:

20 Did he discuss with you either,
21 anything about the cavity that was filled, the
22 filling or the decay of tooth 14 when he was talking
23 to you on March 9, 2022?

24 A. He indicated that it was a mechanical
25 act, not a decay act, that undermined the structural

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1 integrity. He indicated it was pressure from the
2 inside. I don't recall the exact words he used
3 because what he said the structural integrity of the
4 tooth was undermined. He was speaking of a
5 mechanical force, not a force of decay.

6 Q. Did he use a mechanical force?

7 A. I don't recall exactly the term he
8 used.

9 Q. I'm not going through them in any
10 detail in terms of the paragraphs. This talks about
11 the other inmates that you discussed when you
12 refused the cleaning and the other inmates that you
13 asked around in the West Compound. I want to make
14 sure you've given us the name of any inmates you
15 specifically recall.

16 Is there anyone else you recall, other
17 than the individuals you told us earlier?

18 A. Not with certainty. Daniel Lawrence
19 and Don Fitch.

20 Q. Okay. I did have one clarification
21 question on the top of page 15. You've discussed or
22 state -- did you get there, number?

23 "In addition to two months of constant
24 and severe pain and suffering, the ongoing loss of
25 pleasure and enjoyment from drinking hot and iced

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1 liquid has caused plaintiff mental anguish and
2 emotional distress."

3 Do you see that?

4 A. I see that.

5 Q. Did I read that correctly?

6 A. In addition to a month, two months of
7 constant and severe pain and suffering, I want to
8 refer to the two months going from the beginning
9 of -- beginning of January when the cusp fell off my
10 tooth until March 9 when the surgery Riez finally
11 performed.

12 There was all of that time from the end
13 of January until March 9 when the prison was no
14 longer on lockdown yet. I was not called to the
15 clinic during that entire time. My tooth nerve was
16 exposed during which time it -- any time I had food
17 in my mouth there was an ice cube in my mouth.

18 Anytime I had hot -- I've stated for
19 two months my nerve was exposed. I was in serious
20 pain. I didn't think that I needed treatment. I
21 didn't get treatment during that entire time and
22 thereafter I -- drinking iced liquids caused intense
23 pain on this side of my mouth and during this time
24 when I did not have dental treatment it was hard to
25 sleep.

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1 I was thinking this is a prison
2 environment which a -- (inaudible) if I get -- in
3 the upper said of my mouth where that tooth was, it
4 could go straight to my brain, cause abscess, cause
5 brain damage. PTSD, the constant -- because of
6 the -- from this tooth, the exposed nerve was --
7 which caused secondary flashbacks. Made it I was
8 not able to sleep properly. Made it I had panic
9 attacks. It caused mental anguish and emotional
10 distress.

11 (Recess.)

12 (Whereupon, a technical
13 problem with the Court Stenographer's
14 equipment occurred off the record.)

15 BY MS. RAYMOND-FLOOD:

16 Q. Mr. McGillvary, you gave us your
17 explanation of how you were feeling during the two
18 months that I referenced in paragraph 24.

19 I just wanted to understand. You
20 referenced two-month time frame from January to
21 March 9.

22 A. That's correct.

23 Q. I also want to understand. Was part of
24 the January time frame the Covid lockdown?

25 A. Part of the January time frame from

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1 when the cusp fell out until the end of the Covid
2 lockdown was, I believe, the end of January which I
3 said there is writings to refresh my recollection.
4 Those are traffic control records.

5 Q. And between the time of the Covid
6 lockdown ended and March 9, do you recall whether
7 you put in any additional emergency or sick call
8 slips for your tooth?

9 A. I was still waiting for them from the
10 first one and I was called to the North Compound
11 Clinic by Samuel Lopez on February 1st and he
12 indicated that there was supposed to be a filling
13 done on it. At that point I was under the
14 impression that any day now I could be called over
15 to North Compound Clinic and I was just waiting for
16 them to do this.

17 Q. And that filling ultimately was done,
18 according to your complaint on March 9.

19 Is that correct?

20 A. On March 9. I want to clarify.

21 It is expected of inmates not to make
22 excessive grievances or medical requests when you've
23 already placed in a medical request for this same
24 issue. Actually, you can get a charge for that in
25 the inmate handbook.

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1 Q. Who did the filling on March the 9th?

2 A. A writing would refresh my
3 recollection. Could you just look at my complaint?

4 Q. Sure.

5 A. I think it was Joel Bernhard. I want
6 to check.

7 Q. Yup.

8 A. It's been a couple years. Yes. It was
9 Joel Bernhard March 29, 2022.

10 Q. Okay. During the discussion we were
11 having right before the break, you were talking
12 about the triggering of your PTSD.

13 I'm trying to get an understanding of
14 what was the initial cause of your PTSD to the
15 extent you know.

16 A. I'm going to object. It calls for
17 privileged material like medical records privilege
18 as well as Fifth Amendment. I don't really want to
19 talk about it. I invoke the Fifth Amendment on this
20 too.

21 Q. Is your PTSD part of your damage claim
22 in this case? Or are you waiving that portion of
23 the damage claim?

24 A. Whoa.

25 Q. I just want to understand.

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1 If you are waiving it, we don't have to
2 talk about it, if it's part of your damage claim,
3 I --

4 A. The PTSD was preexisting prior to the
5 incident your client caused me.

6 Q. Did your PTSD that occurred prior to
7 your interactions with Mr. Riez have anything to do
8 with dental care?

9 A. It did not. What I was saying was
10 triggered. A triggering of PTSD. When you reach a
11 certain threshold of anxiety, it causes flashbacks
12 to the traumatic events that caused the PTSD in the
13 first place. It was -- does not make those traumatic
14 events relevant to this. The disorder is
15 neurological in nature. As far as what I'm aware,
16 parts of my brain have been hard wired because of
17 that trauma. If intense anxiety and pain occurs, it
18 causes those symptoms to be kindled.

19 Q. Have you been treating or did you treat
20 for the rekindling of the PTSD following these
21 dental issues while you were at New Jersey State
22 Prison?

23 A. You are asking specifically in
24 regards to the triggering of it?

25 Q. Yes.

1 A. The treatment I do is DBH, dielectric
2 behavioral therapy. This involves mindfulness
3 medication. It involves the use of certain
4 interpersonal skills. There is mnemonics such as
5 accept and proof accepts [sic] is short for
6 objectivity contribution.

7 So, in comparison to when things were
8 worse, emotional changes, physical state changes,
9 body changes and sensational changes and changes
10 that -- sensation having cold shower and stuff
11 like that to get your mind off of the stress.

12 In this terms of DBH, I utilized DBT
13 therapy to deal with some of the anxiety and
14 triggers I was experiencing because of the internal
15 pain in the tooth and going to the dental clinic
16 where your client has did that to me which is also
17 triggering now.

18 Q. Have you discussed with your mental
19 health professionals ways to overcome the issue with
20 having further dental care?

21 A. You are asking me specific regards to
22 the dental care?

23 Q. Yes.

24 A. I think I did around the time when I
25 was undergoing the most intense triggers. However,

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1 I can't recall off the top of my head. I do know I've
2 discussed my PTSD with him. But in terms of what's
3 relevant to this action, some of what I've discussed
4 with them is privileged and nonrelevant.

5 Q. Are you still experiencing any results
6 of the PTSD that, as you testified, was triggered by
7 the dental care by Mr. Riez?

8 A. To the PTSD is the condition?

9 Q. Uh-huh.

10 A. It is a preexisting condition that
11 existed completely apart from Mr. Riez. However,
12 the neurological condition has a constellation of
13 effects such as sleep loss, anxiety, panic attacks,
14 flashbacks, night terrors and these are triggered by
15 intense amounts of stress. So to say it was caused
16 by Mr. Riez was kind of a conflating.

17 The condition itself was exacerbated
18 because of the stresses caused by the injury
19 inflicted by Mr. Riez. I want to clarify there was
20 a distinction. He didn't cause the PTSD, he
21 exacerbated preexisting condition.

22 Q. Has the exacerbation of the preexisting
23 condition been resolved as of today?

24 A. No. I avoid the dental clinic because
25 I don't want to get triggered.

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1 Part of DBT is avoiding triggering
2 events if you know you can't handle it. I don't
3 want to sit in a dental chair knowing the guy who
4 deliberately broke my tooth is in the next room. It
5 causes panic attacks and I don't want to act out.

6 Q. And when you say that Mr. Riez
7 deliberately broke your tooth, I just want to
8 understand why you believe it was he did it
9 deliberately.

10 A. So Riez -- was this a question?

11 Q. Yes.

12 A. You want to know what it was he did --

13 Q. No.

14 A. -- or said?

15 Q. Let me rephrase.

16 Why is it that you believe Mr. Riez
17 deliberately damaged your tooth?

18 A. To me, the circumstantial evidence that
19 there have been other inmates whose teeth have been
20 broken in a similar way. Left without care. The
21 fact there is -- there has been standard around
22 New Jersey State Prison of treating inmates as
23 though they are not deserving of medical care.

24 The fact that I could smell the tooth
25 enamel, I did not smell that from any other one

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1 doing dental work and others. I'm feeling kind
2 of -- I have a lot of intense emotions right now
3 trying to describe it. I'm feeling triggered
4 describing this and remembering that there are
5 different circumstantial evidences I outlined in my
6 complaint that led me to believe what he did was
7 intentional.

8 Q. I have to ask this question:

9 If you are feeling triggered, would you
10 like to stop this deposition?

11 A. I would like to do some breathing
12 exercises for 30 seconds if you don't mind.

13 Q. That's fine.

14 I don't have very much more. I'm
15 actually going through my notes as we speak to see
16 if there is anything else I want to ask you about.

17 (Pause on the record.)

18 BY MS. RAYMOND-FLOOD:

19 Q. Mr. McGillvary, do you --

20 A. Are we back on the record?

21 THE STENOGRAPHER: Yes.

22 Q. You have been affirmed by the court
23 stenographer.

24 As you sit here today, do you still
25 experience any pain in tooth 14?

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1 A. Whenever I have really hot or really
2 cold liquids. In the summertime there is extreme
3 heat waves. This is a non-air conditioning
4 facility. I live in a unit with the only type of
5 air movement there is is the fans we have in the
6 cell.

7 So, in order to cool down when it's 100
8 degrees, because these buildings, they bake with the
9 sun's rays and hold heat throughout the night, if
10 it's 100, 104 and it holds the heat throughout the
11 night, in order to cool down before this injury to
12 my tooth I was drinking ice cold water. I was
13 chewing ice cubes. It brought down my core
14 temperature during the heat waves.

15 Instead of being able to do this, I'm
16 unable to cool down in this way. Not only is there
17 a pain to the tooth itself when it's extremely hot
18 during the heat waves, I'm not able to cool down
19 with water as I experience body aches from the heat.
20 I don't know what other types of long-term health
21 facts that could cause being constantly too hot.
22 I'm not able to cool down. It has had a detrimental
23 effect on my health.

24 Q. Have you discussed that with any of the
25 medical providers in the prison?

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1 A. Other than what I've put on the medical
2 record? No.

3 Q. Have you discussed that with --
4 strike that.

5 Let me start with have you discussed
6 with any of the dentists, any additional work that
7 could be done to that tooth 14 to prevent the
8 sensation of hot and cold?

9 A. I had put in a notice of claim form.
10 Shortly after I had asked -- and the other
11 inmates -- and notice of claim form I put to the
12 State of New Jersey, which is a supervisor under
13 which New Jersey Department of Corrections and State
14 University of Rutgers operate and I asked them if
15 they could let me see mental -- dental health
16 professionals other than Bernhard and Riez and they
17 wrote back and said no.

18 Q. Did you discuss it with Dr. Bernhard or
19 Dr. Lopez?

20 A. I stated I didn't want to let Riez near
21 my mouth again and that was it. I didn't want to
22 sit in that dental chair in the North Compound
23 Clinic anymore and this was it.

24 Q. You did not -- have not since spoken to
25 Dr. Lopez or Dr. Bernhard?

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1 A. A couple months after I went to North
2 Compound Clinic in 2022 in the summer, I believe it
3 was August 23, based on what I read here from my
4 recollection; I went back to the clinic and I
5 believe it was Dr. Bernhard. There is a writing to
6 refresh my recollection.

7 Q. Feel free to review it.

8 A. I went back on October 6th.

9 Q. What happened then?

10 A. Okay. Lopez is the one who booked me
11 in for a cleaning. I sat in the chair. My PTSD was
12 triggered and I refused the tooth cleaning.

13 Lopez, he said -- that your client's
14 name was Ronald Riez, R-o-n-a-l-d. I asked for the
15 spelling. He gave me a false spelling of it and
16 I -- he said I'm reading here a note he created
17 contemporaneously with this.

18 Q. Where are you?

19 A. I'm on paragraph 30 of document 1 --

20 Q. Yes.

21 A. -- you marked in this deposition as
22 McGillvary 1. I'm reading Lopez's note he created
23 contemporaneously. He is saying in here "I cannot
24 make any sense to the patient that the hygienist did
25 not see him."

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1 This whole note, when I received it as
2 part of my request for medical records -- I'm trying
3 to find where it was I received it -- reading this,
4 what he put there just completely destroyed my faith
5 in him as a professional.

6 Q. Why is that?

7 A. First of all, he doesn't have a command
8 of the English language, for one. Second of all, he
9 seems to be trying to cover up the fact that he
10 cited Ronald Riez to perform the operation on tooth
11 No. 14.

12 This -- you asked me to refer to a
13 paragraph beginning of this deposition about a
14 confederacy of health professionals as to kind
15 covered up afterwards. His clear indication was he
16 was trying to cover up the fact Ronald Riez breaking
17 my tooth under his supervision. That's why.

18 Q. Let's get into a little bit about the
19 discussion you had with Dr. Lopez on October 6, 2022
20 date.

21 Did he -- did he dispute with you
22 Mr. Riez was the one who did surgery on your tooth?

23 A. He was as ambiguous in person as he was
24 in this written note. I couldn't make sense of how
25 he was referring to things as though he was being

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1 deliberately ambiguous.

2 Q. Did he ever tell you that it was he who
3 did the tooth surgery and not Riez?

4 A. He did not say any such thing. I would
5 have immediately said, what the hell are you talking
6 about.

7 Q. When you say he was ambiguous, what do
8 you recall him saying that was ambiguous?

9 A. I can't recall verbatim what he said.
10 It's been a couple years.

11 Q. Okay.

12 A. I recall it was hard to make sense what
13 he was saying. It seemed he was being deliberately
14 ambiguous, something, somebody, qualifying,
15 qualification for a medical license and with the
16 letter.

17 Q. You went to see him. Was it for the
18 cleaning or to ask him for Mr. Riez's name?

19 A. Are you asking my purpose or are you
20 asking the purpose of the visit?

21 Q. So let's break this down.

22 What was the purpose of the visit?

23 A. They scheduled me to go back for a
24 teeth cleaning from the one I refused.

25 Q. You refuse again October 6, 2022.

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1 Correct?

2 A. I refused again because the dental
3 service room has become an environmental trigger for
4 me or sitting in that chair that sets off my PTSD
5 because of the associations that have been made in
6 my mind between that dental services room or that
7 and the injury to my tooth and the surrounding
8 distress I felt over that.

9 Q. While you were in that room October 6,
10 2022 or at some point you refused the cleaning, was
11 it then that you asked Dr. Lopez for Mr. Riez's
12 name?

13 A. As I was refusing, signing the refusal
14 form, I asked him as I was filling in the form to
15 give me a spelling of the dental hygienist name that
16 performed the filling on my tooth and he gave me
17 that -- he gave me Ronald Riez. Referring to your
18 client Ronald Riez.

19 Q. He gave that because you asked him for
20 the name of the hygienist?

21 A. The one who did -- I asked him what is
22 the name of that guy who did the filling on my
23 tooth.

24 Q. Did he confirm for you on this
25 October 6, 2022 visit it was Riez that did the

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1 filling of your tooth?

2 A. He didn't confirm anything in my mind
3 because of his ambiguity. It was hard to
4 understand -- I'm trying to say this in a gentle
5 way.

6 Q. You don't have to.

7 A. He needs to go back to school and learn
8 English. I don't understand what he says.

9 Q. Let me mark this one last document.

10 (Consent for medical, dental
11 or surgical treatment form dated
12 10/6/22, received and marked as
13 McGillvary Exhibit 3, for
14 identification.)

15 BY MS. RAYMOND-FLOOD:

16 Q. I'm going to show you a document marked
17 McGillvary 3 which is dated October 6, 2022, which
18 appears to be signed by you.

19 I'm handing you that document.

20 A. On this document I wrote in my refusal:
21 "Ronald Riez deliberately broke my tooth. I'm
22 having a panic attack in the treatment chair." I
23 signed and dated it October 6, 2022.

24 Q. Is this the document you are referring
25 to that you filled out during the October 6, 2022

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1 visit to refuse the cleaning?

2 A. That is correct.

3 Q. Is this also the document you were
4 trying to get Mr. Riez's name so you could complete
5 this document and you asked Dr. Lopez for the
6 hygienist's name?

7 A. That is correct.

8 Q. Dr. Lopez also signed off on this
9 document October 6, 2022 confirming, in fact, you
10 refused the cleaning. Did you?

11 A. He did not do this in my presence. I
12 can testify to that. It's outside of my personal
13 knowledge. Appears to be a signature on the bottom.

14 Q. That's fine. You are familiar enough
15 with the top portion where you read it and you can
16 authenticate this portion above your signature line
17 that you -- well, a little below as well.

18 Just to be clear, do you recall filling
19 out this section that says "Ronald Riez deliberately
20 broke my tooth and I'm having a panic attack in the
21 dentist chair. I want to but anxiety is too much"?

22 Can you confirm you were the person in
23 fact that filled this out?

24 A. I needed to find that. You said filled
25 that out.

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1 Q. The words I just read.

2 A. Please don't talk over me. I'm
3 answering the question.

4 When I filled out this form I needed to
5 make a record of the fact I was having a panic
6 attack and I want treatment but the anxiety is too
7 much.

8 So, in terms of part two where it says
9 I understand the nature of the condition, I refused
10 to be transported. I may be subject to disciplinary
11 action. It talks about all these things. I
12 specifically said in the part beneath that I want
13 treatment, but the anxiety is too much. That's what
14 I wrote.

15 Q. From those sentences right there, "I'm
16 having a panic attack. I want treatment but the
17 anxiety is too much," is your handwriting and that
18 is what you personally wrote?

19 A. I personally wrote that myself. That
20 is my handwriting. I recognize that.

21 Q. Okay. Did anything occur after this
22 refusal where you were disciplined? Were you sent
23 to mental health? Did anything happen as a result
24 of this treatment refusal?

25 A. I can't recall.

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1 Q. Okay. After this October 6, 2022
2 cleaning visit that you refused, did you seek any
3 mental health treatment?

4 A. That's too broad. That's a privileged
5 term.

6 Are you asking specifically in -- in
7 regard to the dental?

8 Q. I'm specifying the panic attack when
9 you were in the dentist chair.

10 A. I performed DBT myself. I continued to
11 meet with my psychologist at the appointed times.
12 However, my psychologist has given me a set of
13 coping mechanisms that they expect me to follow my
14 treatment plan. And without waiving my objections
15 I, without divulging mental health years, I think
16 they expect me to do DBT myself.

17 This isn't exactly The Sands Beach
18 Resort where they do the rehab or the other, the
19 Mayo Clinic. This ain't that.

20 Q. Have you had -- did you have any
21 specific discussion with your mental health provider
22 regarding this particular panic attack?

23 A. Not that I can recall.

24 Q. Okay. Great. I don't have anything
25 further. We are finished.

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1 A. Okay.

2 (Discussion held off the
3 record.)

4 MS. RAYMOND-FLOOD: We are going to
5 continue your deposition for the next minute.

6 You are still under oath.

7 BY MS. RAYMOND-FLOOD:

8 Q. You were beginning to tell us, when we
9 went off the record, what the document that you have
10 in front of you is.

11 Would you please explain it?

12 A. Just to clarify I've been affirmed, you
13 know -- I'm sorry. I've been under oath. So the
14 witness's -- sorry.

15 THE WITNESS: The document here, I
16 would like to have this marked for evidence.

17 (Handwritten document,
18 received and marked as McGillvary
19 Exhibit 4, for identification.)

20 A. So you can be sure I didn't pull a
21 switcheroo with this, that was the first page on the
22 note pad I grabbed from the law library yesterday.

23 Yesterday, the law library held a
24 single judge motion under federal rule of the
25 Appellate Procedure 27C to every single judge in

1 U.S. Court of Appeals regarding a document that was
2 received by the Central District of California, but
3 has now been entered onto the record.

4 And so I had to file a return receipt
5 with the notice of intent to stand on pleading that
6 was sent to both the U.S. Court of Appeals this
7 morning, I received it yesterday and each of those
8 three digit codes on that represents the initials of
9 a judge in the U.S. Court of Appeals for the Ninth
10 Circuit.

11 Q. Does that have anything to do with this
12 case?

13 A. Nothing to do with this case. Because
14 I brought it to deposition I just wanted you to know
15 what it was.

16 MS. RAYMOND-FLOOD: Thank you very
17 much.

18 (Whereupon, the witness was
19 excused and the proceedings adjourned
20 at 1:30 p.m.)
21
22
23
24
25

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C E R T I F I C A T E

I, LORI N. LEWKOWITZ, a Certified Court Reporter and Notary Public of the State of New Jersey, and Certified Shorthand Reporter of the State of New York, certify that the foregoing is a true and accurate transcript of the stenographic notes of the deposition of said witness who was first duly sworn by me, on the date and place hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative, nor employee, nor attorney or counsel to any parties involved; that I am neither related to any of the parties to this action by blood or by marriage, and that I am not financially interested in this matter.

-----
LORI N. LEWKOWITZ, C.C.R.

N.J. C.C.R. No.: XI002229

N.Y. C.S.R. No.: 001041

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and
(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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